

To: CN=Steven Neugeboren/OU=DC/O=USEPA/C=US@EPA[]

Cc: []

Bcc: CN=Peter Ornstein/OU=R8/O=USEPA/C=US[]

From: CN=Mary Grady/OU=DC/O=USEPA/C=US

Sent: Fri 6/8/2012 1:26:25 PM

Subject: Water Law News for June 8, 2012

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WATER LAW NEWS

JUNE 8, 2012

HIGHLIGHTS

Drinking Water

Science Advisory Board Panel Formed

To Consider Perchlorate Contaminant Goals

An Environmental Protection Agency Science Advisory Board panel will consider approaches for developing a maximum contaminant level goal for perchlorate under the Safe Drinking Water Act, starting with a two-day meeting in July, the agency...

Enforcement

Akin Raises Concerns About EPA Cattle Surveillance

Missouri Rep. Todd Akin (R-Mo.) joined the Nebraska congressional delegation in seeking information on unannounced aerial surveillance inspections of livestock facilities in the Midwest, in a June 7 letter to the Environmental Protection...

Everglades

Florida Submits NPDES 'Regulatory Package'

To Operate 57,000 Acres of Stormwater Treatment Areas

TAMPA, Fla.—The state of Florida submitted a revised water pollution permit to the Environmental Protection Agency as part of a proposed regulatory package to operate 57,000 acres of stormwater treatment areas (STAs) designed to...

Taxes

Adjustment Factor for Sequestration Credit Released

The Internal Revenue Service June 6 released the new inflation adjustment factor for the credit for carbon dioxide sequestration under tax code Section 45Q. In Notice 2012-42, IRS said the inflation adjustment factor will be 1.0438 for calendar...

Water Pollution

Environmental Group Sues Minnesota Agency

Over Delay in Permit for Wastewater Plant

ST. PAUL, Minn.—An environmental group sued the Minnesota Pollution Control Agency June 5, alleging the agency's failure to issue permits for the Alexandria, Minn., wastewater treatment plant had adversely affected the water...

Water Pollution

House Committee Adopts Bill Banning EPA,

Corps From Issuing Water Act Guidance

The House Transportation and Infrastructure Committee approved a bill June 7 that would prohibit the Environmental Protection Agency and the U.S. Army Corps of Engineers from finalizing and implementing 2011 guidance to clarify the scope...

Water Pollution

House Committees Approve Legislation To Reauthorize Marine Debris Program

Two House committees approved legislation June 7 that would reauthorize the marine debris program at the National Oceanic Atmospheric Administration for another three years....

Water Pollution

South Carolina Governor Signs Legislation With Permit Exceptions for Small Discharges

RALEIGH, N.C.—Permits will not be required for small discharges of pollutants into the environment in South Carolina under a bill (H. 4654) signed by Gov. Nikki Haley (R) June 6....

Wetlands

Salazar Announces \$26.3 Million for Wetlands

Secretary of the Interior Ken Salazar announced June 7 that more than \$25 million in federal grants has been approved to support activities to conserve 144,000 acres of wetlands for migratory bird protection in the United States and Canada....

Despite Mayors' Call, EPA Retains Enforcement Ahead Of Wet Weather Policy

Despite calls for a moratorium from some mayors, EPA is continuing to aggressively enforce municipal wastewater and stormwater requirements ahead of the release of its imminent policy for providing cities with flexibility in implementing the costly infrastructure upgrades needed to comply.

DOJ Evaluating Options After Court Backs Retroactive Stormwater Fees

A federal district court has held that a 2011 amendment to the Clean Water Act (CWA) requiring federal facilities to pay local stormwater fees applies retroactively -- handing the Department of Justice (DOJ) a loss in the first ruling on the applicability of the measure which is already forcing DOJ to review its stance in two similar cases.

Industry Hopes Panel Vote Bolsters Bid To Block CWA Jurisdiction Guide

The House Transportation & Infrastructure Committee has approved a bipartisan bill aimed at blocking pending EPA and Army Corps of Engineers guidance for clarifying the scope of the Clean Water Act (CWA), a move industry and GOP critics of the guide hope bolsters a similar measure approved last week in a Corps spending bill.

Whitfield 'Optimistic' Of Transport Bill Deal Setting Coal Ash 'Safeguards'

Rep. Ed Whitfield (R-KY), chair of a key House energy subcommittee, is "cautiously optimistic" lawmakers can reach a deal on including language in the pending transportation bill that would limit EPA's authority to regulate coal ash disposal, possibly by requiring additional environmental "safeguards" that some Democrats have sought.

Water Office Urged To Adopt Flexible, Coordinated Approach In Climate Plan

Industry and municipalities are urging EPA to ensure that upcoming measures to incorporate climate change considerations into Office of Water activities are flexible enough so that they do not stymie effective action and coordinated with other federal agencies to avoid duplication.

Industry Fears Cost Study May Counteract Flexibilities In Cooling Water Rule

The electric utility industry says EPA's recently released survey measuring ratepayers' willingness to pay higher utility costs in exchange for additional measures to protect fish from cooling water intake structures is "deeply flawed," and will counteract compliance flexibilities the agency has suggested it may include in its final rule.

Latest Blogs

Panel Backs Permit Streamlining Bill

The House Judiciary Committee has approved an industry-backed bill aimed at speeding environmental reviews and permits for construction projects, rejecting a suite of Democratic amendments . . .

NATURAL GAS:

House Republican prepping bill to promote gas in trucking, block fracking regs

Nick Juliano, E&E reporter

Published: Friday, June 8, 2012

A Nebraska congressman is preparing legislation to take a more targeted approach to promoting natural gas as a transportation fuel in heavy-duty trucks, primarily by eliminating federal regulation of hydraulic fracturing and potentially removing an excise tax on truck purchases.

Details of the bill are still being developed, its sponsor, Rep. Lee Terry (R-Neb.) told E&E Daily yesterday, but the "marquee" provision would ensure that states, rather than the federal government, have the sole authority to regulate fracking.

Uncertainty over the potential for federal fracking regulations to drive up natural gas costs was among the top concerns Terry said he had heard in meetings over the last year with trucking industry representatives and other stakeholders. However, he acknowledged that truckers also wanted some sort of financial help to cover the additional costs of natural gas-fueled trucks.

"They said, 'We've looked at the economics, and we still think that we need a little bit of incentive,'" Terry said of his meetings with the industry. "So we're looking at that little bit of incentive part. Not to telegraph, but several trucking companies suggested maybe removing the 12 percent excise tax would be enough of an incentive."

Terry said he was considering eliminating the excise tax on purchases of new natural gas-fueled trucks for three years to boost the industry, a provision that he estimated would cost "a couple hundred million dollars." However, he still is searching for another source of revenue to replace the excise tax's contribution to the Highway Trust Fund.

"We don't want to short the transportation fund because then the truckers go from yea to nay; that's not a good trade-off for them," Terry said, explaining that a replacement revenue stream has not yet been identified.

Terry also said he was working with a Democrat he expected to co-sponsor the bill but would not name the lawmaker. He said he expects to introduce the bill later this month.

The overall goal of Terry's bill is to boost the use of gas for transportation through a narrower mechanism than the broad suite of tax incentives contained in the so-called "NAT GAS Act," sponsored by Rep. John Sullivan (R-Okla.). That bill was introduced last year with broad bipartisan support and appeared headed for easy passage until it encountered sharp resistance from conservative groups such as the Club for Growth and Heritage Action for America.

"We just wanted to find a way without really spending money, which is the big issue on Sully's bill," Terry said in a brief interview off the House floor. "It had a high cost and focused subsidies in areas that ... don't need subsidies."

"What they need is regulatory certainty not subsidies, so we kind of clear that underbrush and we go to the one area where we saw was the resistance," he added. "And we'll try to give them a short term, short amount to just lower the cost a little bit for them so there's incentive to get in there."

The NAT GAS Act would have extended an array of tax incentives for purchasing natural gas cars and trucks for five years, while also offering financial incentives for fueling stations; the costs would be offset with a user fee on natural gas, which Sullivan says meant the bill would be fully paid for.

Sullivan said he was working with Terry on the forthcoming bill and expected to be a co-sponsor.

"There's no question we need to have natural gas be a transportation fuel," he said in a brief interview yesterday. "So how do we get there? Do we get there through tax credits? ... Or do we look at regulatory? Or both? This is more of a regulatory approach, which I think is a good approach."

Terry said the bill would bar federal regulation of hydraulic fracturing because states are best equipped to oversee the practice. Republicans and industry representatives have long complained about the Obama administration's approach to the practice, which has included new or forthcoming rules and guidance documents from U.S. EPA aimed at air emissions and the use of diesel fuel in fracking fluid as well as proposed rules from the Bureau of Land Management requiring disclosure of fracking chemicals and establishing well bore requirements.

Terry said trucking companies are concerned over what those rules might do to natural gas prices -- which have been at 10-year lows because of increased supplies unlocked by fracking.

"Trucking companies weren't willing to make the investment until they had some level of comfort, and they all kept saying, 'We need some help,'" he said. "If we're going to spend an extra \$60,000 to \$80,000 per vehicle, we want to make sure that it's going to be there."

TRANSPORTATION:

House counteroffers on enhancements as Boehner threatens punt to lame duck

Nick Juliano, E&E reporter

Published: Thursday, June 7, 2012

House transportation conferees today sent the Senate a counterproposal on funding for bike paths, sidewalks and related infrastructure in what lawmakers saw as a positive development in talks on the transportation bill, despite House Speaker John Boehner's threat of delaying action until after the election if no deal is struck by the end of this month.

The counteroffer covering so-called transportation enhancements was one of three proposals House conferees are going to send their Senate counterparts, House Transportation and Infrastructure Chairman John Mica (R-Fla.) told reporters today. Additional proposals would go to the Senate tomorrow and Monday, although Mica would not provide details on their contents.

Mica said he expects responses from the Senate next week. The conferees should know, he said, by the end of next week

whether they will be able to agree on a final transportation bill.

Earlier today, Boehner (R-Ohio) threw down the gauntlet for conferees, saying that while he hopes differences between the chambers can be resolved, he won't accept another short-term extension when funding for federal transportation programs expires June 30. Instead, he suggested delaying further work until after the November election, which would mean tacking it to an already-packed lame-duck agenda.

"Because if we get up to June 30, I am not interested in some 30-day extension," Boehner said today. "Frankly, I think if we get to June 30, it'd be a six-month extension, and move this thing out of the political realm that it appears to be in at this moment."

Mica said Boehner's comments were meant to "put as much pressure on the conferees as possible" in an effort to spark a breakthrough in the negotiations. The two discussed what to do if conferees cannot agree by the deadline, he said, but they haven't agreed on how long an extension to move if it came to that.

Democrats were quick to pan the suggestion that the month could end without a long-term deal in place.

"House Republicans should not walk away from their responsibilities and kick the can down the road, without offering solutions," House Minority Whip Steny Hoyer (D-Md.) said in a statement. "We should be focused on giving businesses certainty and reaching a bipartisan, bicameral agreement to move forward on a highway bill, especially after the Senate passed an overwhelmingly bipartisan bill in March."

Other controversial aspects of the bill, such as House-included riders mandating approval of the Alberta-to-Texas Keystone XL pipeline and blocking U.S. EPA from regulating coal ash, have not been taken up yet, the lawmakers said.

Mica predicted Keystone XL's inclusion would not sink the negotiations.

"It's not a big obstacle," he said today. "Everybody knows it passed [with] 293 [votes] in the House and only lacked two votes in the Senate, and there's a lot of movement ... on the House side to encourage the Senate to accept it from the Democrats' side of the aisle, so that's encouraging, we have support there."

Rep. Reid Ribble (R-Wis.), a freshman member of the transportation conference, said the length of an extension should be based on how close lawmakers are to reaching a deal.

"It seems to me if we're close to a deal, then a shorter extension makes more sense than a longer one," he told reporters today.

"However, if you're going to do six months, it seems to me you probably ought to do seven or eight" so that the bill's fate is decided by whoever wins in November rather than during a lame-duck session.

The transportation enhancements program has been a key sticking point in the negotiations amid objections from Republicans to prior requirements that 1 to 2 percent of funds be set aside for bike and pedestrian infrastructure, highway beautification, and similar programs.

Senate Environment and Public Works Chairwoman Barbara Boxer (D-Calif.) and ranking member James Inhofe (R-Okla.) -- who are sharply divided on the issue -- worked out a compromise by folding the program into another air quality program and reducing the number of programs eligible for funding, but that has not satisfied House Republicans (E&E Daily, June 7).

The House counteroffer represents a shift in the earlier House position, conferee Rep. Bill Shuster (R-Pa.) said, although he would not provide details on what it included.

"We've moved," he said of the House counteroffer, whereas the first offer from the upper chamber was "just warmed-over Senate language."

HYDRAULIC FRACTURING:

GOP subcommittee chairman calls EPA water pollution studies flawed

Nick Juliano, E&E reporter

Published: Thursday, June 7, 2012

Rep. Andy Harris (R-Md.) is keeping pressure on U.S. EPA to explain what Republicans and industry critics say are flawed studies the agency conducted related to potential water pollution caused by natural gas hydraulic fracturing.

In a letter sent today to EPA Administrator Lisa Jackson, Harris requests information and documents related to instances where the agency "leapt to scientific conclusions before having all the facts" in publicizing reports of potential groundwater contamination from fracking in places including Parker County, Texas; Dimock, Pa.; and Pavillion, Wyo.

"These examples, while individually very troubling, collectively suggest EPA is not objectively pursuing an improved understanding of the relationship between hydraulic fracturing and drinking water, but rather is determined to find fault with the technology in order to justify sweeping new regulations," Harris wrote in the letter.

Harris points to a study being carried out by EPA and other agencies, at the request of Congress, to evaluate the health and safety implications of fracking in requesting additional detail about how it is being conducted and reviewed, and why the agency decided to focus on aspects such as environmental justice that were not explicitly requested. The letter also questions whether EPA is giving industry representatives enough of a role in reviewing the study and collecting concurrent groundwater samples that would be analyzed.

In a brief interview today, Harris, who chairs the House Science, Space and Technology Subcommittee on Energy and Environment, said he was not planning legislation to modify EPA's study requirements or limit its other activities related to fracking. He said he hoped to be able to work cooperatively with the agency to ensure it is employing "sound science."

LAW:

Scientists' qualms about BP spill emails reignite debate on legal privilege

Lawrence Hurley, E&E reporter

Published: Thursday, June 7, 2012

Oil giant BP PLC's successful attempt to gain access to internal communications by scientists who calculated how much oil leaked during the Deepwater Horizon disaster has rekindled a debate over whether there should be greater legal protections for scholars who are sucked into litigation.

Last week, scientists at the Woods Hole Oceanographic Institution in Massachusetts handed over emails and other materials as required by an April 20 court order (EnergyWire, June 5).

The two scientists in question, Christopher Reddy and Richard Camilli, helped establish that the flow rate from the leaking Macondo well in the aftermath of the April 2010 explosion was 57,000 barrels a day, or 4.9 million barrels in total. BP had maintained it was a lower number.

Woods Hole, a private institution well-regarded by industry and government, contracted with the U.S. Coast Guard to conduct the research. The findings were later included in reports, which BP already has access to.

BP, which is defending itself from multiple lawsuits in federal court, then sought internal communications that were generated during the period in question. For BP, the flow rate question is crucial because it faces penalties under the Clean Water Act. The size of those penalties will be based in large part on how much oil was spilled.

Reddy and Camilli, supported by their Woods Hole colleagues, were reluctant to hand over the material.

Last weekend, the scientists wrote an op-ed in the Boston Globe in an attempt to draw attention to what they perceive as a broad problem for scientists who get drawn into court against their wishes.

In a separate statement on the Woods Hole website, the institution's president, Susan Avery, and director of research, Laurence Madin, wrote that "there remains inadequate legislation and legal precedent to shield researchers and institutions who are not parties to litigation from having to surrender pre-publication emails."

Without greater protections, there will be a "chilling effect on how science is conducted," they wrote.

If internal deliberations are routinely made public via litigation, scientists "may reasonably fear that their deliberative processes will be attacked and their intellectual property exposed," and they might end up feeling "forced to curtail, censor or avoid the normal deliberative process," Avery and Madin concluded.

In a statement, BP spokesman Geoff Morrell defended the company's actions, saying the subpoena "is in no way an attack on science."

He noted that the arguments made by Woods Hole "were considered and rejected by the court, and Woods Hole did not appeal the court's decision."

'Scholastic privilege'

Reddy and Camilli's attorney, Christopher Land of the Goodwin Procter firm, tried his best.

Land unsuccessfully sought to persuade U.S. Magistrate Judge Sally Shushan of the Eastern District of Louisiana not to grant BP's request, citing a "scholastic privilege" that different courts recognize to varying degrees. He was successful in limiting the scope to documents produced within a limited time frame.

"There are some protections in place under case law, but they vary and it depends on how courts apply them," Land said in an interview.

In her written opinion, Shushan appeared to take the scientists' concerns seriously. But she concluded that for the period in which the scientists were working closely with the government, there was "a substantial need for the analysis documents, because there is no other source for these documents."

Crucially, "it will not hamper ... future research efforts" for those documents to be made available to BP, she wrote.

Shushan did, however, restrict the time frame by separating out later work that the scientists carried out with other researchers not employed by the government. That material "is much closer to the kind of academic work" protected by the scholastic privilege, she wrote.

"If BP gains access to the analysis documents for these articles, that could hamper future research efforts," Shushan said.

'Nailed to the wall'

The question of whether protections for scientists should be expanded has stumped legal experts for some time, in part because there is no easy solution, according to Rena Steinzor, a law professor at the University of Maryland's Francis King Carey School of Law.

But she conceded that it is a genuine concern for scientists.

"If you get into any high-profile controversy, you get nailed to the wall," she said.

Steinzor agreed with the Woods Hole scientists that, in certain circumstances, parties involved in litigation could seek to undermine scientific findings by taking statements out of context, but she questioned whether some kind of blanket privilege, similar to that between attorneys and their clients, would be the right solution.

"A privilege would be hard to be precise about," Steinzor said. "It would be a very tricky thing to develop."

Roger Pielke, a professor of environmental studies at the University of Colorado, Boulder, has his own concerns about the claims made by the Woods Hole scientists.

"Scientists who do work for the government should get used to the fact that as their work becomes more relevant to law and policy, it will be much more closely scrutinized," he said. "In general, I think that is a good thing because we need more effective

use of science in decisionmaking."

He noted that for scientists working in the pharmaceutical or defense industries, a high-level of interest in their work -- sometimes involving litigation -- is largely expected.

"For the earth sciences, this can be a brave new world, and unsettling, I certainly understand," Pielke said. "But to respond with demands for special protection or exemption from scrutiny probably won't be well-received."

Doubts about the need for greater protection have not stopped some from at least investigating whether it could be done. Public Employees for Environmental Responsibility, an environmental watchdog, believes the Woods Hole episode is part of a larger problem.

PEER Executive Director Jeff Ruch sees BP's move as being comparable to the efforts by climate skeptics to undermine climatologist Michael Mann by seeking access to his emails dating back to when he worked at the University of Virginia.

In March, the Virginia Supreme Court ruled that the state attorney general, Ken Cuccinelli (R), could not obtain the documents (Greenwire, March 2).

"Increasingly we are seeing corporate interests who are using legal means to discredit scientists," Ruch said.

[Click here to read the April 20 ruling.](#)

AGRICULTURE:

Amendments pour in as Senate votes to debate farm bill

Amanda Peterka, E&E reporter

Published: Thursday, June 7, 2012

Senators voted 90-8 this morning to proceed with floor action on the farm bill, the hulking five-year measure that sets commodity subsidies, authorizes rural conservation and energy programs, and funds food stamps.

The Senate is expected to come to an agreement soon on how to handle amendments, several of which are filed already. It's expected that there will be more than 100 amendments filed, both germane and nongermane to agriculture.

A pair of Republican amendments filed already would halt the Army Corps of Engineers' efforts to widen the scope of wetland permitting under the Clean Water Act. Another, by Sen. John McCain (R-Ariz.), targets the use of federal dollars for ethanol blender pumps and storage facilities.

It's not clear what amendments will get a vote during the floor debate. Agriculture Committee ranking member Pat Roberts (R-Kan.) yesterday said he hopes floor debate will last a week, but most insiders expect it will stretch to the end of June.

The bill introduced by Agriculture Chairwoman Debbie Stabenow (D-Mich.) would cut \$23.6 billion from farm programs over the next decade and eliminate more than 100 program authorizations. Among the changes proposed in the bill is a consolidation of farm conservation programs and a shift from direct subsidies to an insurance-based safety net for farmers.

The bill also provides \$800 million over the next five years for programs to construct biorefineries and grow feedstocks necessary to build up the country's cellulosic biofuel industry.

"This bill moves beyond the corn-based ethanol to the next generation of biofuels," Stabenow said on the Senate floor today.

McCain's amendment targets the Rural Energy for America Program, prohibiting any of its funds from being used to construct, install or operate an ethanol blender pump or storage facility. In 2011, Agriculture Secretary Tom Vilsack announced a goal of using the REAP program to install 10,000 blender pumps across the country over the next five years.

McCain attempted to halt the funding last year in an amendment to the agriculture appropriations bill, but he pulled it during floor debate.

An amendment filed by Sen. John Barrasso (R-Wyo.) would prohibit the Obama administration from finalizing or using a proposed guidance that seeks to increase the number of streams and wetlands covered by Clean Water Act permitting. Republican Sens. James Inhofe (Okla.), John Boozman (Ark.), Jeff Sessions (Ala.), Dean Heller (Nev.), David Vitter (La.) and Mike Crapo (Idaho) are co-sponsors.

The amendment mirrors a bill introduced last month by a bipartisan group of House lawmakers (Greenwire, June 5). The House Transportation and Infrastructure Committee this morning voted to report the bill to the floor (see related story).

Sen. Rand Paul (R-Ky.) is also targeting the Obama administration's Clean Water Act activities. His amendment would block U.S. EPA and the Army Corps from implementing a number of definitional regulations and guidances, including any future efforts to redefine "navigable waters," used in the law to define the limit of the federal regulatory reach.

Paul's amendment would also stop EPA from using a "nexus test" to determine whether a wetland or isolated water body is linked to navigable waters. The Supreme Court has ruled that the agencies can use the test to decide on whether a permit is needed on a given tract.

'Money we just don't have'

The amendment also has language that limits EPA's ability to enter private property to collect data about navigable waters.

Two other amendments by Barrasso seek to waive environmental review requirements for certain grazing permits and allow the Agriculture and Interior secretaries to enter into agreements with state foresters to restore forests, rangeland and watersheds.

Roberts and Stabenow said yesterday they would welcome any amendments on the bill, but Stabenow said she will turn to procedural actions if debate on the bill stretches too long. The current farm bill expires Sept. 30, and the agriculture leaders are hoping to avoid an extension in order to give farmers certainty to make planting decisions for next spring.

The conservative Club for Growth yesterday urged senators to vote "no" on the bill, saying it has grown too big and asserts too

much government control over the public.

Sen. Orrin Hatch (R-Utah) was among the eight Republicans voting against moving forward on the bill. He said the bill "spends money we just don't have."

"I'll be keeping a close eye on the bill moving forward and hope we can improve upon what we have right now," he said, "but unfortunately, right now I view this bill as too fundamentally broken to be fixed."

The Obama administration today also said it had some concerns with the bill, but added it "looked forward to working with Congress" on those issues. In a statement, the administration said it is looking for more savings from crop insurance and commodity subsidy programs.

WETLANDS:

Bill to block Obama's Clean Water Act policy advances to House floor

Paul Quinlan, E&E reporter

Published: Thursday, June 7, 2012

Legislation intended to block the Obama administration's effort to expand federal pollution and wetlands-filling regulations under the Clean Water Act won committee approval today, setting the stage for a vote by the full House.

The House Transportation and Infrastructure Committee voted 33-18 to support a substitute amendment to the bill (H.R. 4965) introduced last month by both Republican and Democratic leaders of the Transportation and Agriculture committees. The bill now has 68 co-sponsors.

The legislation would prohibit U.S. EPA or the Army Corps of Engineers from finalizing Clean Water Act regulatory guidance proposed by the Obama administration last year that would widen federal Clean Water Act jurisdiction over seemingly isolated streams and wetlands.

It would also prohibit the administration policy proposal, which is now under final review at the White House Office of Management and Budget (Greenwire, Feb. 22), from being used as the basis for any decisions or new regulations concerning the scope of the Clean Water Act.

Although the bill could pass the GOP-controlled House this Congress, as other measures like it have, it faces long odds in the Democratic-controlled Senate.

Water Resources and Environment Subcommittee Chairman Bob Gibbs (R-Ohio), an original sponsor who introduced the clarifying substitute amendment, called the newly proposed agency interpretation of the Clean Water Act a "de facto" regulation and an "unprecedented expansion that would regulate waters beyond Congress' intentions."

Gibbs emphasized during committee debate that the goal of the bill was simply to prevent the EPA from "skirting the law" by avoiding a full and transparent rulemaking process. He added that changes sought by the administration to Clean Water Act enforcement should take the form of a bill rather than a rule or guidance document.

"If the administration seeks statutory changes to the Clean Water Act, then a proposal should be submitted to Congress and we should have a healthy debate," Gibbs said.

Democratic opponents on the committee, led by water subpanel ranking member Tim Bishop (D-N.Y.), said the bill would only add to regulatory confusion created by two Supreme Court rulings and subsequent guidance policies enacted under the George W. Bush administration, which he said rolled back pre-existing federal Clean Water Act jurisdiction meant to protect drinking water supplies from industrial pollution.

Bishop objected to the bill not having received a hearing before today's markup and noted that, unlike Bush-era guidance on the matter, the Obama policy had been subject to 90 days of public comment. He also argued that the bill could open any future rulemaking on the matter by any administration subject to litigation over whether the Obama guidance was used as a template.

"A more prudent approach would be to let the regulatory process work as intended rather than tying the hand of the executive branch," Bishop said.

Del. Eleanor Holmes Norton (D-D.C.) introduced an amendment that would have exempted the bill from applying to any waters used as a supply of drinking water. Democrats said EPA has estimated that 117 million Americans get drinking water from public systems that rely at least in part on intermittent, headwater and ephemeral streams that they say the guidance seeks to protect. Transportation and Infrastructure ranking member Nick Rahall (D-W.Va.) objected to the amendment on the grounds that issues relating to drinking water fall under the Safe Drinking Water Act and, thus, under the jurisdiction of the Energy and Commerce Committee. Mica upheld the objection, and the amendment was ruled not germane.

WATER POLLUTION:

Enviros squeeze in coal ash lawsuit ahead of S.C. deadline

Published: Thursday, June 7, 2012

Three environmental groups filed suit yesterday over discharges of toxic arsenic into a South Carolina river.

The Coastal Conservation League, the Southern Alliance for Clean Energy and the Waccamaw Riverkeeper brought the suit against state-owned utility Santee Cooper. The Southern Environmental Law Center is representing the three groups.

They want the court to order Santee Cooper to remove coal ash, which contains arsenic, from the lagoons and put it in a landfill. Currently, the utility's coal ash lagoons sit on the banks of the Waccamaw River, where it could potentially wash into groundwater and waterways.

The suit comes right before a deadline that will bar certain types of complaints from citizen groups against companies for violating the state's pollution-control law.

"This is the last chance for citizens to go to court in order to ensure the Waccamaw River is protected from these coal ash lagoons," said Frank Holleman, an attorney at the law center. "Santee Cooper's plan ... is to leave this coal ash beside the Waccamaw River in perpetuity."

The state Legislature approved the ban of such suits yesterday, but lawyers for the environmental groups say the lawsuit is valid because it was filed before Gov. Nikki Haley (R) signed the bill. Haley's office did not disclose at what time she signed it. Business lobbyists, angered by the complaint, said they had a compromise with environmentalists to allow existing suits to continue but would limit additional lawsuits (Sammy Fretwell, Columbia [S.C.] State, June 7). -- JE

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Cars, highways and intersections across the United States are developing minds of their own. Indeed, the entire transportation network is getting smarter and learning to communicate so that people in increasingly congested cities can get where they need to go faster. These expanding "intelligent transportation systems" encompass a new variety of technologies that boost safety, productivity and environmental protection.

2. **BEHAVIOR:** If you remove traffic jams, will people drive more?

Intelligent transportation systems are designed to relieve congestion and reduce the greenhouse gas emissions that come with it. But there are doubts circulating as to just how effectively these systems can mitigate climate change.

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o a South Carolina river.

The Coastal Conservation League, the Southern Alliance for Clean Energy and the Waccamaw Riverkeeper brought the suit against state-owned utility Santee Cooper. The Southern Environmental Law Center is representing the three groups.

They want the court to order Santee Cooper to remove coal ash, which contains arsenic, from the lagoons and put it in a landfill. Currently, the utility's coal ash lagoons sit on the banks of the Waccamaw River, where it could potentially wash into groundwater and waterways.

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